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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/599,398	08/15/2007	William Francis McCulloch	89334.0001	8250
7590	06/22/2010		EXAMINER	
Robert E. Cannuscio Drinker Biddle & Reath LLP One Logan Square 18th and Cherry Streets Philadelphia, PA 19103-6996			LE <sub>n</sub> MARK T	
			ART UNIT	PAPER NUMBER
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/599,398	<b>Applicant(s)</b> MCCULLOCH, WILLIAM FRANCIS
	<b>Examiner</b> MARK T. LE	<b>Art Unit</b> 3617

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If no period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).

Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

1) Responsive to communication(s) filed on 30 April 2010.

2a) This action is FINAL.      2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

4) Claim(s) 33-38, 41, 43, 46-62, 65-68, 71-73 and 76-81 is/are pending in the application.

4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

5) Claim(s) \_\_\_\_\_ is/are allowed.

6) Claim(s) 33-38, 41, 43, 46-62, 65-68, 71-73, 76-81 is/are rejected.

7) Claim(s) \_\_\_\_\_ is/are objected to.

8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a) All    b) Some \* c) None of:  
 1. Certified copies of the priority documents have been received.  
 2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

1) Notice of References Cited (PTO-892)  
 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)  
 3) Information Disclosure Statement(s) (PTO/SB/08)  
 Paper No(s)/Mail Date \_\_\_\_\_

4) Interview Summary (PTO-413)  
 Paper No(s)/Mail Date: \_\_\_\_\_

5) Notice of Informal Patent Application  
 6) Other: \_\_\_\_\_

**DETAILED ACTION**

1. This communication is responsive to the amendments filed on April 30, 2010.

Applicant's amendments and remarks have been carefully considered.

2. Claims 41, 43 and 47 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claims 41, 43 and 47 are indefinite because they depend from a cancelled claim.

3. Claims 41, 43 and 47 cannot be further treated on the merits because the limitations thereof cannot be determined.

4. Claims 59-60 and 78-79 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claims 59 and 78, line 3, the expression "a standard rail to rail spacing" is indefinite because it is not clear as to what dimensions are covered by the instant claimed standard.

Similarly, in claims 60 and 79, the expression "a standard spacing" is indefinite because it is not clear as to what dimensions are covered by the instant claimed standard.

5. Claims 33, 36-38, 48-53, 56, 58-61 and 65 (59-60 as best can be treated) are rejected under 35 U.S.C. 102(b) as being anticipated by Summer (US 4,538,722).

Summer discloses a railway rail handling apparatus having all of the features recited in the instant claims, including ground engaging wheel means formed by endless

track devices 7, and rail moving apparatus or rail raising apparatus 9, 11 supported by horizontal beams 4 and vertical supports 5, wherein, the rail moving apparatus or rail raising apparatus is operative within the foot prints of the ground engaging wheel apparatus.

Regarding the instant claimed railway rail handling apparatus being capable of steering, such as that recited in claim 37, and to move only one rail at a time, such that recited in claim 38, note that since the structure of Summer is capable of the operations as claimed, the instant claimed intended use limitations are considered met.

Regarding the instant claimed rail moving apparatus being configured to be extendible, as recited in instant claim 48, note that the rail moving apparatus of Summer is extendable by extending hydraulic rams 9.

Regarding the instant claimed rail moving apparatus 9 capable of being moved laterally, such as that is recited in instant claim 49, consider the structure of Summer, wherein, rail moving apparatus is capable of moving laterally by trolleys 8.

Regarding the instant claimed rail moving apparatus being capable of swivel in relation to the apparatus, such as that is recited in instant claim 50, note that the rail moving apparatus of Summer are mounted with pin connections at the upper and lower ends of hydraulic rams 9; therefore, the rail moving apparatus of Summer is readable as capable of swivel movements as claimed.

Regarding the rail moving apparatus having an elongate body with a first end swivel on the apparatus and the second end configured to engage a rail, such as that recited in instant claim 51, consider the elongated body formed by elements 9,11 as

shown in the rear of Fig. 1 of Summer, wherein, the swivel upper end of the body is mounted to the apparatus at trolley 8 and lower end is configured to engage a rail.

Regarding the instant claimed arresting means, recited in instant claim 52, note that the rail moving apparatus of Summer are supported by trolleys 8, which are configured to be moved and arrested by user operable trolley cable 12 connected thereto by a connection pins (see Figure 1 of Summer); therefore, the structure of Summer is considered to include arresting means as broadly claimed.

Regarding the rail moving apparatus permitting rotational movement of the supported rail about a substantially vertical axis, such as that is recited in instant claim 53, note that the rail moving apparatus of Summer has hydraulic rams 9 that permits such rotational movement about a substantially vertical axis.

Regarding the instant claimed roller for facilitating longitudinal movement, as recited in instant claim 56, consider for example rollers 87,95 shown in Figure 14 of Summer.

Regarding the instant claimed continuous chain treads, as recited in instant claim 58, consider the chain treads 7 of Summer.

Regarding the instant claimed chain treads being spaced to substantially the same extend as a standard rail to rail spacing, as recited in instant claim 59, note that the spacing of the chain treads 7 of Summer is readable as being substantially corresponding to a standard for large track systems of large traveling bridge cranes.

Regarding instant claim 60, consider the relative length of chain treads 7 shown in Figure 1 of Summer.

Regarding instant claim 61, note that the apparatus of Summer is self propelled; therefore, it is considered to have generator of motive power for driving the chain treads.

Regarding the method steps recited in instant claim 65, note that the operation of the structure of Summer is considered to require the method steps as claimed.

6. Claims 34-35, 46, 67-68, 71-73 and 76-80 (78-79 as best can be treated) are rejected under 35 U.S.C. 103(a) as being unpatentable over Summer (US 4,538,722).

Summer is applied above.

Regarding the support members mounted at each side of the apparatus on the ground engaging wheel apparatus, consider four spaced apart support members 5, as shown in Figure 1 of Summer.

Regarding the support members being spaced by a distance of approximately 1m in a transverse direction and approximately 1m in a longitudinal direction, the length of the chassis being approximately 1m, the height of the chassis being approximately 1m, the overall length of the apparatus is approximately 1.7m, the spacing of the chain treads being of a size corresponding to a standard rail spacing, the length of the chain treads being of a size corresponding to a standard spacing of railway sleepers, it is noted that the instant claimed dimensions are factors related to the size of the apparatus or chain treads, which are not considered to be patentably significant. As a matter of common sense, it would have been obvious to one skilled in the art to make the apparatus or the components of Summer in a desired size or smaller, which

includes the instant claimed size or dimensions, so as to handle a similar rail system of a smaller size.

Regarding the instant claimed apparatus being configured for steering over ground, as recited in instant claim 67, consider the steerable ground engaging wheel apparatus 7 of Summer.

Regarding instant claim 68, note that the apparatus of Summer is readable as being capable of raising one rail at a time.

Regarding the instant claimed chassis, as recited in instant claim 71, consider chassis 4 of Summer that is supported by four spaced apart support members 5.

Regarding the instant claimed ground engaging wheel apparatus, as recited in instant claim 77, consider the ground engaging wheel apparatus 7 of Summer.

7. Claims 33, 54-55 and 57 are rejected under 35 U.S.C. 103(a) as being unpatentable over Theurer (US 5,435,252) in view of Theurer (US 6,668,728).

Theurer '252 discloses a railway rail handling apparatus having features similar to that recited in the instant claims, including wheel apparatus 5 for support the apparatus for travel, rail moving apparatus shown in Fig. 3 or 4 of Theurer, and railway rail raising apparatus 16,17,19 operable to raise a track assembly including a rail above ground. The apparatus of Theurer is capable of performing the operations as recited in the instant claims.

Regarding the wheel apparatus being a ground engaging wheel apparatus, it is noted that ground engaging wheel apparatus are common parts of track working machines. Note for example ground engaging wheel apparatus 12 of Theurer '728.

Therefore, it would have been obvious to one skilled in the art to use ground engaging wheel apparatus similar to that taught in Theurer '728 in the structure of Theurer '252 for providing a stable support on ground.

Regarding the instant claimed rail moving means being configured to completely encircle a part of the length of a rail, as recited in instant claim 54, consider the rail moving means assembly shown in Figure 4 of Theurer '252.

Regarding the instant claimed gate means recited in instant claim 55, consider gate means 53 shown in Figure 4 of Theurer '252.

8. Claim 62 is rejected under 35 U.S.C. 103(a) as being unpatentable over Theurer (US 5,435,252) in view of Theurer (US 6,668,728) and Niskin (US 3,836,120).

Theurer '252 and '728 are combined above.

Regarding the raising means including a block and tackle, note that block and tackle devices used for raising loads are well known. Note for example the block and tackle device of Niskin, which comprises a sheave block and tackle with a motor means. In view of Niskin, it would have been obvious to one skilled in the art to alternatively use a well known lifting device, similar to that taught by Niskin, in place of lifting device 19 of Theurer '252 for performing the same expected function and achieving the expected advantages of the well known lifting device.

9. Claim 81 is rejected under 35 U.S.C. 103(a) as being unpatentable over Summer (US 4,538,722) in view of Niskin (US 3,836,120).

Summer is applied above.

Regarding the raising means including a block and tackle, note that block and tackle devices used for raising loads are well known. Note for example the block and tackle device of Niskin, which comprises a sheave block and tackle with a motor means. In view of Niskin, it would have been obvious to one skilled in the art to alternatively use a well known lifting device, similar to that taught by Niskin, in place of lifting device Summer for performing the same expected function and achieving the expected advantages of the well known lifting device.

10. Applicant's arguments have been carefully considered, but they are not persuasive.

Regarding Applicant's argument that the known standard gauge is 56 1/2 inches, and cited an exemplary definition of the term "standard gauge", on the one hand it is true that the standard gauge for American freight and passenger railroad lines is 56 1/2 inches. However, the instant claims are broad enough to read on many other railway structures that are not just American freight and passenger railroad lines. Note for example, the railway rail recited in the instant claims would cover toy railways, amusement railways, mine car railways, railways for bridge cranes, and railways of conveyor apparatuses, such as the apparatus of the above applied reference - Summer. Therefore, what is the standard of the American freight and passenger railroad lines is not necessary the standard of other types of railways.

Regarding Applicant's arguments related to footprint, it appears that Applicant's arguments are based on a much more limited sense than what the instant claims would cover. In the instant claims, the expression "footprint" is broad enough to include an

area that extends laterally from one ground engaging wheel apparatus on one side of the track to the other ground engaging wheel apparatus on the other side of the track, and longitudinally along the path of travel of the ground engaging apparatuses. In the structure of Summer '722, the rail moving apparatus is operative well within the footprint, i.e. the area as described above.

Regarding Applicant's argument that the rail moving apparatus of Theurer '252 is not capable of bending the rail laterally from a first lateral position to a second lateral position, Applicant should consider lateral drive 45 in the rail moving apparatus shown in Figure 3 of Theurer '252.

11. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

12. Any inquiry concerning this communication or earlier communications from the examiner should be directed to MARK T. LE whose telephone number is (571)272-6682. The examiner can normally be reached on Mon-Fri, between 8:15-4:45 (Teleworking).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Samuel Morano can be reached on 571-272-6684. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

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